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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/381,385	02/01/2000	PHILIP C. ASHMAN	BWT1USA	3888

7590 11/25/2002

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EXAMINER

PATTERSON, MARC A

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 11/25/2002

20

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/381,385	ASHMAN ET AL.	
	Examiner	Art Unit	
	Marc A Patterson	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-7,12 and 15-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-7,12 and 15-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: |

DETAILED ACTION

NEW REJECTIONS

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1 – 2, 5 – 7, 12 and 15 – 35 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The phrase ‘non – platelet filled’ is not discussed in the specification.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1 – 2 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase ‘flavor molecules’ is indefinite as its meaning is unclear.

5. Claims 1 – 2, 5 – 7, 12 and 15 – 35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase ‘whereby placement of said further layer of said non – polar thermoplastic polyolefin resin filled with talc

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inwardly of said core barrier layer relative to the flavored good reduces the absorption of flavor molecules of the flavored good into said laminate material and stiffens said laminate material allowing said laminate material to be of a relatively thin thickness' is indefinite, as the phrase defines a desired result rather than a structural limitation. The method by which absorption is reduced (preamble) is therefore unclear, and it is unclear what the absorption is 'reduced' from; the meaning of the phrase 'relatively thin thickness' is also unclear. To what is it relative? For purposes of examination, a container comprising the claimed laminate will be assumed.

6. Claims 7 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrase 'Commission Internationale d'Eclairage whiteness' is indefinite, as it is directed to an international standard and may therefore change with time.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1 – 2, 5 – 7, 12 and 15 – 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Sacks et al. (U.S. Patent No. 4,528,235).

With regard to Claims 1 – 2, 5 – 7, 12 and 15 – 35, Sacks et al. disclose a multilayer sheet for packaging oxygen – sensitive materials (Sacks also, therefore, teaches a container comprising the sheet as a wall; column 2, lines 17 – 33; column 3, lines 13 – 15); the sheet comprises three layers of high density polyethylene comprising 10 – 50% of a talc filler having a platelet shape (column 3, lines 27 – 48; column 5, lines 15 – 25; column 6, lines 55 – 63); each layer constitutes a barrier layer which is non – polar (column 6, lines 4 – 27); the intermediate layer constitutes a tie layer between the other two layers; the thickness of each layer is between 10 and 50 microns (column 2, lines 58 – 67); the aspect ratio of the talc is at least 5, and averages from 16 to 30 (each platelet has a diameter of 1 to 8 micrometers, and the average thickness is 0.5 micrometers; column 2, lines 58 – 67); the container which is fabricated from the sheet contains a food (therefore a flavored good; column 1, lines 15 – 18). With regard to the claimed aspect of the barrier layer being a ‘non – polyolefin’, Sacks et al. teach that high density polyethylene is equivalent to polycaprolactam (which is an amorphous polyamide material; column 2, lines 18 – 33) as a layer of the structure; the claimed aspect of the barrier layer being a ‘non – polyolefin’ therefore reads on Sacks et al.

ANSWERS TO APPLICANT’S ARGUMENTS

9. Applicant’s arguments and amended claims regarding the 35 U.S.C. 102(b) rejection of Claims 1 – 2, 5 – 7, 12 and 15 – 35 as being anticipated by Sacks et al. (U.S. Patent No. 4,528,235), of record on page 2 of the previous Action, have been considered and have been found to be persuasive. The rejections are therefore withdrawn. The new 35 U.S.C. 112 second paragraph rejections of Claims 1, 2, 5 – 7, 12 and 15 – 35 and 35

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U.S.C. 102(b) rejection of Claims 1, 2, 5 – 7, 12 and 15 – 35 as being anticipated by Sacks et al. (U.S. Patent No. 4,528,235) above are directed to amended Claims 1 – 2, 5 – 7, 12 and 15 – 35.

Applicant's arguments regarding the 35 U.S.C. 112 second paragraph rejection of Claims 1 – 2, 5 – 7, 12 and 15 – 35, of record on page 2 of the previous Action, have been carefully considered but have not been found to be persuasive for the reasons set forth below.

Applicant argues, on page 8 of Paper No. 19, that amended Claims 1 – 2, 5 – 7, 12 and 15 – 35 overcome the prior art of record. However, the phrase 'non – platelet filled' is not discussed in the specification. The specification on page 11, lines 1 – 14 indicates that the barrier layer is not '15% by weight talc filled', but no broader language is used which would exclude all platelet fillers. The phrase therefore constitutes new matter. The new 35 U.S.C. 112 first paragraph rejection of Claims 1 – 2, 5 – 7, 12 and 15 – 35 above is directed to amended Claims 1 – 2, 5 – 7, 12 and 15 – 35

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Patterson, whose telephone number is (703) 305-3537. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM. If attempts to reach the examiner by phone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached at (703) 308-4251. FAX communications should be sent to (703) 872-9310. FAXs received after 4 P.M. will not be processed until the following business day.

Marc A. Patterson, PhD.

Marc Patterson
Art Unit 1772

[Signature]
HAROLD PYON
SUPERVISORY PATENT EXAMINER
11/22 11/22/02